

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOHN ERCELL STATON,

Plaintiff,

v.

**2:06 CV 1
(Maxwell)**

**GOVERNOR JOE MANCHIN,
JIMMY PLEAR, AND POTOMAC
HIGHLAND REGIONAL JAIL,**

Defendants.

ORDER

It will be recalled that on October 19, 2005, *pro se* Plaintiff John Ercell Staton, an inmate at the Potomac Highlands Regional, filed a civil rights complaint against the above-named Defendants. Although the Plaintiff's case was originally filed in the United States District Court for the Southern District of West Virginia, it was transferred to the United States District Court for the Northern District of West Virginia on December 29, 2005, in light of the fact that the Complaint alleges that the Plaintiff's constitutional rights were violated at the Potomac Highlands Regional Jail.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with LR PL P 83.02, *et seq.*, and 28 U.S.C. §§ 1915(e) and 1915A.

On October 12, 2006, United States Magistrate Judge Seibert issued a Report And Recommendation wherein he recommended that the Plaintiff's claims against Governor Manchin, Jimmy Plear, and the Potomac Highlands Regional Jail be dismissed with prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e) for failure to state a claim and that the Plaintiff's claims against Jerry L. Detrick and First Sergeant Collins, to the extent he is attempting to raise such claims, be dismissed without prejudice as insufficiently plead.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of service of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Court's review of the docket in the above-styled action has revealed that no objections to Magistrate Judge Seibert's October 12, 2006, Report And Recommendation have been filed and that this matter is now ripe for review.

Upon consideration of Magistrate Judge Seibert's October 12, 2006, Report And Recommendation, and having received no written objections thereto¹, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on October 12, 2006 (Docket No. 28), be, and the same is hereby, **ACCEPTED** in whole and the above-styled civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's claims against Governor Manchin, Jimmy Plear, and the Potomac Highlands Regional Jail be, and the same are hereby, **DISMISSED with prejudice**. It is further

ORDERED that, to the extent that the Plaintiff is attempting to raise a claim against Jerry L. Detrick and First Sergeant Collins, those claims be, and the same are hereby, **DISMISSED without prejudice** as insufficiently plead. It is further

¹The failure of a party to file an objection to a Report And Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of Court is directed to transmit copies of this Order to the *pro se* Plaintiff and to counsel of record.

ENTER: October 20, 2008

/S/ Robert E. Maxwell
United States District Judge